

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.1920 of 2015
and
W.M.P.No.5245 of 2018

His Holiness Sri-La-Sri Kasivasi,
Muthukumaraswamy Thambiran Swamigal,
Rep. By Power Holder Srimath Sundaramurthi
Thambiran Swamigal, Joint Head of Kasimadam,
Kasimadam, Thirupanandhal - 612 504.
Thanjavur District.

... Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai-9.
2. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai-34.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Mayiladuthurai.
4. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur.
5. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli.
6. The Sub Registrar,
O/o. The Sub Registrar of Registration Department,
Boothapandi, Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent, relating to the order in suo motu revision No.03/R.E.4-1/2015, dated 13.01.2015 and quash the same.

For Petitioner : Mr.Doraisami, Senior Counsel
for Muthumani Doraisami

For respondents: Mr.R.Venkatesh - For R1 to R5
Govt. Advocate (HR & CE)

Mr.P.P.Purushothaman - For R6
Govt. Advocate (Registration)

Mr.R.Raman Laal - For R7

O R D E R

This writ petition has been filed challenging the show cause notice issued under Section 114(a) of the Tamil Nadu Hindu Religious and Charitable Endowment Department Act, 1959 (hereinafter referred to as 'HR & CE Act, 1959').

2. It is the case of the petitioner that the Commissioner, Hindu Religious and Charitable Endowment Department, viz., the second respondent herein, by his order dated 30.03.2007 held that only the properties mentioned in the schedule to the compromise decree belongs to the Mutt and all the properties belongs to the successive Madathipathies.

3. It is the case of the petitioner that he is a Madathipathy of the petitioner's Mutt. It is his case that he has been carrying on the administration of the Mutt strictly in accordance with compromise decree and the clarification issued by the second respondent by his order dated 30.03.2007. This being the case, according to him, the first respondent has illegally initiated proceedings under Section 114(a) of the HR & CE Act, 1959, to revise the order of the second respondent, dated 30.03.2007, exercising its suo-motu power of Revision. It is also the case of the petitioner that initiation of the suo-motu Revision after about eight years is illegal. According to the petitioner, the first respondent has pre-concluded the issue and has issued the impugned show cause notice dated 13.01.2015.

4. Aggrieved by the impugned show cause notice dated 13.01.2015 issued under Section 114(a) of the HR & CE Act, 1959, this Writ Petition has been filed.

5. Heard Mr.Doraisami, learned Senior Counsel appearing on behalf of the petitioner, Mr.R.Venkatesh, learned Government Advocate (HR & CE) appearing on behalf of the respondents 1 to 5, Mr.P.P.Purushothaman, learned Government Advocate

(Registration) for the 6th respondent and Mr.R.Raman Laal, learned counsel for the proposed respondent in WMP. No.5245 of 2018.

6. A separate counter affidavit has been filed by the first respondent as well as by the respondents 2 to 5. As seen from the respective counter affidavits, the impugned notice is only a show cause notice and therefore, the writ petition is not maintainable. According to them, the Writ Petition filed by the petitioner is pre-matured and without waiting for the outcome of the review under Section 114(a) of the HR & CE Act, 1959, the petitioner has approached this Court under Article 226 of the Constitution of India. The respondents 2 to 5 in their counter affidavits have also assured that no final orders will be passed without affording reasonable opportunities of hearing the petitioner. They have also denied the statement made by the petitioner that they have already pre-concluded the issue under the impugned notice issued under Section 114(a) of the HR & CE Act, 1959. They have categorically denied the statement made by the petitioner that any suo-motu review under Section 114(a) of the HR & CE Act, 1959, will have to be exercised only within a reasonable period. According to them, there is no time limit fixed for reviewing the order of the Commissioner, HR & CE Department viz., the second respondent.

7. The learned Senior Counsel for the petitioner submitted that after a lapse of more than eight years, the first respondent has initiated the suo motu Review of the order of the Commissioner, dated 30.03.2007 under the impugned show cause notice. According to him, only within a reasonable period, such power can be exercised by the first respondent under Section 114(a) of the HR & CE Act, 1959. Hence, it is further contented that the Commissioner, by his order dated 30.03.2007, has categorically held that only the properties mentioned in the schedule to the compromise decree belongs to the Mutt and all the properties belongs to the successive Madathipathies. According to him, certain persons made a false representation to the respondents. Based on the false representation, the first respondent has initiated action under Section 114(a) of the HR & CE Act, 1959. According to him, the impugned show cause notice has been issued without authority under law and hence, the Writ Petition is maintainable and the said show cause notice will have to be quashed.

8. However, the learned Government Advocate for the respondents 1 to 5, as well as the learned Government Advocate for the 6th respondent would submit that the first respondent has got power under Section 114(a) of the HR & CE Act, 1959, to exercise the suo motu Review of the order of the Commissioner, dated 30.03.2007. According to the learned counsel, the first

respondent has not pre-concluded the issue as it is only a show cause notice. According to both the counsel, the impugned show cause notice has been issued exercising the power available to the first respondent under Section 114(a) of the HR & CE Act, 1959. According to them, when the first respondent is having authority to issue the notice, the writ petition is not maintainable.

9. The learned Government Advocate (HR & CE) has also filed counter wherein they have categorically pleaded that they have not pre-concluded the issue and the first respondent will be giving sufficient opportunities to the petitioner to put forward his case before the first respondent, when an enquiry was conducted by the first respondent pursuant to the impugned show cause notice issued under Section 114(a) of the HR & CE Act, 1959.

10. It is the contention of the learned counsel appearing for the respondents that the writ petition has been filed prematurely and hence, it is not maintainable.

11. Section 114(a) of the HR & CE Act, 1959 is reads as follows:

'114-A. (1) The Government may either on their power of own motion or On application by any person aggrieved, Government by an order of the Government under item (iii) of clause to review.

(a) or the second proviso to clause (a) of sub-section (1) of section 47 or the second proviso to sub-section (1) of section 49, review any such order,-
(a) on the basis of the discovery of new and import ant facts,-

(i) which were not then within the knowledge of the Government when the order was made; or

(ii) which after the exercise of due diligence, were not then within the knowledge of the applicant or could not be produced by him when the order was made; or

(b) on the basis of some mistake or error apparent on the face of the record ; or

(c) for any other sufficient reason, and pass such order thereon as i hey think fit :

Provided that no such order shall be made except, after giving the person affected a reasonable opportunity of being heard in the matter:

Provided further that no application for review shall be preferred more than once in respect of the same order.

(2) Every application for review shall be preferred within such time and in such manner as may be prescribed.

(3) The decision or order passed on the application for review shall be final.

(4) The Government may pass such interlocutory orders pending the decision on the application for review as the Government may deem fit.

(5) The Government may award costs in any proceedings for review to be paid by the applicant as they deem fit''

12. Admittedly, the first respondent has got suo-motu power to review the order of the Commissioner, HR & CE. Department. As seen from the Section 114(a) of the HR & CE Act, 1959, it does not prescribe a period within which such suo motu powers can be exercised by the first respondent.

13. Admittedly, the impugned notice is only a show cause notice issued under Section 114(a) of the HR & CE Act, 1959. The main grievance of the petitioner is that the impugned show cause notice has been issued belatedly after lapse of eight years from the date of the order of the Commissioner, HR & CE. It is also the grievance of the petitioner that the first respondent has pre-concluded the issue. However, this has been disputed by the respondents. As seen from their counter affidavit wherein they have categorically pleaded that they have not pre-concluded the issue and according to them the first respondent has exercised powers only as per the provisions of Section 114(a) of the HR & CE Act, 1959.

14. As seen from the Section 114(a) of the HR & CE Act, 1959, there is no time limit prescribed for exercising the suo-Motu power for the first respondent. Unless and until the show cause notice has been issued without authority under law, the Writ Petition under Article 226 of Constitution of the India is not maintainable.

15. Admittedly, in the instant case, the show cause notice which is the subject matter of in this writ petition, has been issued by the first respondent having authority under law. The question of limitation raised by the petitioner can very well be agitated by the petitioner before the first respondent, when the first respondent conducts an enquiry under Section 114(a) of the HR & CE Act, 1959. Even without replying to the impugned show cause notice dated 13.01.2015, the petitioner is approached this Court under Article 226 of the Constitution of India, which in my considered view, is not maintainable. Further, the respondents have categorically pleaded in their counter

affidavits that they will give sufficient opportunity to the petitioner to raise all contentions as and when the proceedings initiated under Section 114(a) of the HR & CE Act, 1959, is heard. This being the case, the rights of the petitioner will be protected if the petitioner is permitted to reply to the impugned notice and be heard at the time of the enquiry conducted by the first respondent in the proceedings initiated by them under Section 114(a) of the HR & CE Act, to review the suo-motu order of the Commissioner, dated 30.03.2007.

16. This Court is of the considered view that the writ petition filed by the petitioner is pre-mature as even without filing a reply to the impugned show cause notice, he has approached this court under Article 226 of the Constitution of India.

17. For the foregoing reasons, this Court is of the considered view that there is no merit in the writ petition and the same is dismissed. However, this court permits the petitioner to send a reply to the impugned show cause notice dated 13.01.2015 issued by the first respondent in suo-motu revision No.03/R.E.4-1/2015, dated 13.01.2015 within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall pass final orders, within a period of twelve weeks thereafter, and it is made clear that the first respondent shall give sufficient opportunity to the petitioner as well as other interested parties including the applicant in WMP.No.5245 of 2018 and also grant a right of personal hearing to the petitioner in the enquiry proceedings initiated under Section 114(a) of the HR & CE Act, 1959.

18. In the result, the Writ Petition is dismissed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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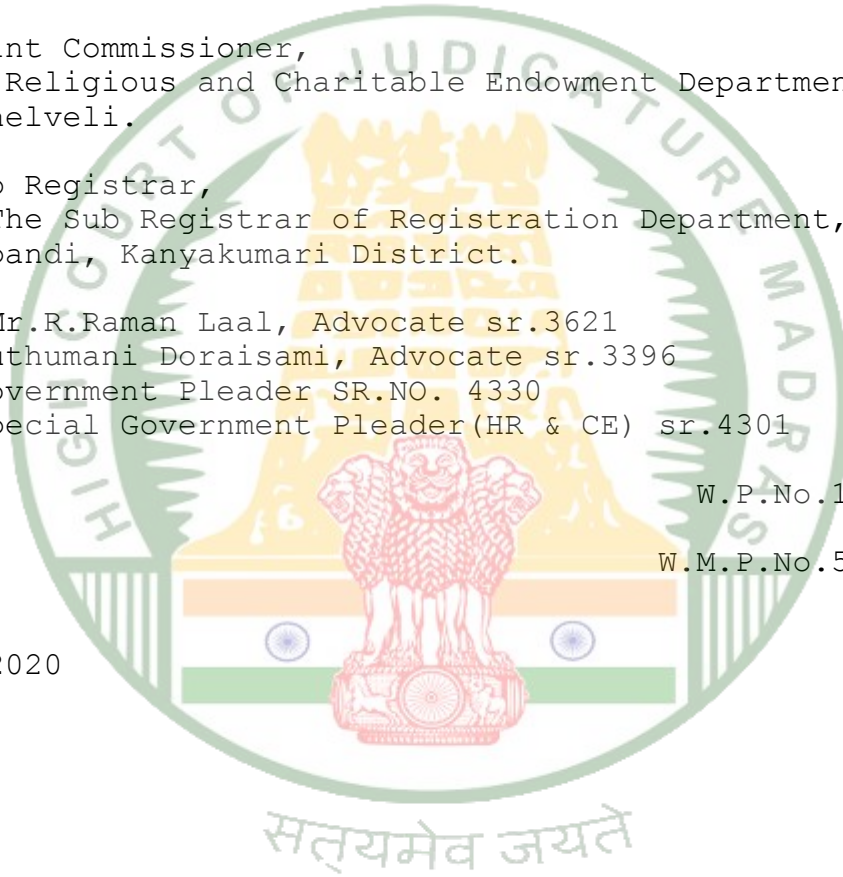
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+1cc to Mr.R.Raman Laal, Advocate sr.3621
+1cc to Muthumani Doraisami, Advocate sr.3396
+1cc to Government Pleader SR.NO. 4330
+1cc to Special Government Pleader(HR & CE) sr.4301

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